

3:13-cv-566-RJC
(3:04-cr-194-RJC)

Respondent.

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729 (4th Cir. 2011). On May 25, 2011 and December 16, 2011, the Fourth Circuit denied Petitioner's motions to file a second or successive § 2255 motion. (Case No. 3:04-cr-194, Doc. Nos. 69, 70: Orders).

On February 25, 2013, Petitioner filed another § 2255 motion to vacate, which the Court dismissed as successive. (Case No. 3:13-cv-145, Doc. No. 1: Motion; Doc. No. 5: Order). Petitioner then submitted the instant motion.¹ (Doc. No. 1).

II. DISCUSSION

Pursuant to 28 U.S.C. § 2244(b)(3)(A), “[b]efore a second or successive application permitted by [Section 2255] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” See also § 2255(h) (“[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals.”). Petitioner has not shown that he has obtained the necessary permission from the Fourth Circuit to file a successive petition. Accordingly, this petition must be dismissed. See Burton v. Stewart, 549 U.S. 147, 153 (2007) (failure of petitioner to obtain authorization to file a second or successive petition deprived the district court of jurisdiction to consider the second or successive petition “in the first place.”); United States v. Dudley, No. 12-7927, 2012 WL 765721, at *1 (4th Cir. Mar. 1, 2013) (district court obligated to dismiss unauthorized successive § 2255 motion raising Simmons claim).

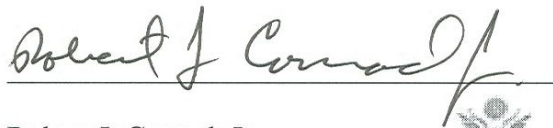
¹ The motion was initially filed as a memorandum in the second § 2255 case, (Case No. 3:13cv-145, Doc. No. 9), but was later filed as a new case based on Petitioner's letter stating that he intended it to be filed as a motion, (Doc. No. 1).

III. CONCLUSION

IT IS, THEREFORE, ORDERED that Petitioner's § 2255 motion, (Doc. No. 1), is **DISMISSED** as successive.

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 474, 484 (2000) (holding that when relief is denied on procedural grounds, a petitioner must establish both that the correctness of the dispositive procedural ruling is debatable and that the petition states a debatably valid claim of the denial of a constitutional right).

Signed: December 16, 2014


Robert J. Conrad, Jr.
United States District Judge

